

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SCOTT C. HOBERT</b>	)	
Claimant	)	
VS.	)	
	)	
<b>ASTRO CAP MANUFACTURING WEST, INC.</b>	)	Docket No. 1,017,877
Respondent	)	
AND	)	
	)	
<b>COMMERCE &amp; INDUSTRY INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier (respondent) appealed the August 26, 2004 preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

**ISSUES**

This is a claim for an April 22, 2004 accident. In the August 26, 2004 Order, Judge Hursh granted claimant temporary total disability benefits and medical treatment with a Dr. Prostic.

Respondent contends Judge Hursh erred by ordering respondent to pay the medical expense claimant incurs with Dr. Prostic as authorized medical benefits. Respondent contends the Judge should have allowed it to furnish claimant a list of three names of qualified physicians from which claimant would choose an authorized doctor. Accordingly, respondent requests the Board to modify the August 26, 2004 Order.

Conversely, claimant argues the Board does not have jurisdiction at this juncture of the claim to review the August 26, 2004 Order. In the alternative, claimant argues the Board should find respondent arbitrarily and unreasonably refused to provide claimant with an orthopedic specialist, arbitrarily and unreasonably terminated claimant's temporary total disability benefits and medical benefits, and, therefore, affirm the preliminary hearing Order.

The preliminary issue on this appeal is whether the Board has jurisdiction at this juncture of the claim to review the August 26, 2004 Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The issues raised by respondent are not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, the Board's jurisdiction to review preliminary hearing findings is limited to the following:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of the worker's employment?
- (3) Did the worker provide the employer with timely notice of the accidental injury and timely written claim for workers compensation benefits?
- (4) Whether certain other defenses apply.<sup>1</sup>

The term "certain defenses" refers to defenses that dispute the compensability of the accident under the Workers Compensation Act.<sup>2</sup>

Additionally, the Board may review those preliminary hearing orders in which it is alleged the judge has exceeded his or her jurisdiction or authority in granting or denying the relief requested.<sup>3</sup>

Respondent contends the Judge should have allowed it to provide claimant the names of three qualified physicians from which claimant would have chosen an authorized doctor. That issue is not one of the issues enumerated above.

Moreover, respondent's argument that the Judge lacked jurisdiction to appoint a specific doctor to treat claimant is without merit. At a preliminary hearing, the judge has the authority to determine whether an employer and its insurance carrier have failed or neglected to provide appropriate medical treatment and, if so, the judge may appoint a

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<sup>1</sup> K.S.A. 44-534a(a)(2).

<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>3</sup> K.S.A. 2003 Supp. 44-551(b)(2)(A).

doctor to provide such treatment. And that finding is not subject to review under K.S.A. 44-534a.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>4</sup>

**WHEREFORE**, the Board dismisses respondent's appeal of the August 26, 2004 preliminary hearing Order entered by Judge Hursh.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2004.

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BOARD MEMBER

c: Gary L. Jordan, Attorney for Claimant  
Robert J. Wonnell, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>4</sup> K.S.A. 44-534a(a)(2).